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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE NATIONAL SECURITY AGENCY TELECOMMUNICATIONS RECORDS LITIGATION This Document Relates To: ALL ACTIONS	**No. M:06-cv-01791-VRW** **NOTICE OF FILING BY THE UNITED STATES OF PUBLIC DECLARATION OF LT. GEN. KEITH B. ALEXANDER** Hon. Vaughn R. Walker

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NOTICE OF FILING BY THE UNITED STATES OF PUBLIC DECLARATION OF LT. GEN. KEITH B. ALEXANDER

The United States hereby provides notice of the filing of the attached unclassified Declaration of Lieutenant General Keith B. Alexander, Director, National Security Agency, dated January 24, 2007 (Exhibit 1). As indicated by counsel for the United States at the February 9, 2007 hearing, this declaration was filed by the United States with the United States Court of Appeals for the Sixth Circuit in *ACLU v. NSA*, Nos. 06-2095, 06-2140, and is submitted in this proceeding to provide further public information regarding the orders of the Foreign Intelligence Surveillance Court issued on January 10, 2007, beyond the information provided in the notice filed by the United States on January 17, 2007. *See* Docket No. 127 (Notice by the United States of Attorney General's Letter to Congress). Also attached is an additional paragraph that was originally included in the classified version of the declaration filed in Sixth Circuit proceedings and was subsequently released as unclassified (Exhibit 2).

Dated: February 22, 2007

Respectfully submitted,

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EXHIBIT 1

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AMERICAN CIVIL LIBERTIES UNION, ET AL.,	)	
Plaintiffs - Appellees/Cross-Appellants,	)	
v.	)	Nos. 06-2095, 06-2140
NATIONAL SECURITY AGENCY, ET AL.,	)	
Defendants - Appellants/Cross-Appellees.	)	

DECLARATION OF LIEUTENANT GENERAL KEITH B. ALEXANDER, DIRECTOR, NATIONAL SECURITY AGENCY

(U) I, Lieutenant General Keith B. Alexander, do hereby state and declare as follows:

(U) Introduction and Summary

1. **(U)** I am the Director of the National Security Agency ("NSA"), an intelligence agency within the Department of Defense. I am responsible for directing the NSA, overseeing the operations undertaken to carry out its mission and, by specific charge of the President and the Director of National Intelligence, protecting NSA activities and intelligence sources and methods. I have been designated an original TOP SECRET classification authority under Executive Order No. 12958, 60 Fed. Reg.

19825 (1995), as amended on March 25, 2003, and Department of Defense Directive No. 5200.1-R, Information Security Program Regulation, 32 C.F.R. § 159a.12 (2000).

2. **(U)** The purpose of this declaration is to provide some background about the new orders that the Foreign Intelligence Surveillance Court ("FISA Court") issued on January 10, 2007. I have also executed a separate classified declaration dated January 24, 2007, and lodged *in camera* and *ex parte* in this case. Text from the classified version of this declaration has been altered or redacted in this unclassified version, and the paragraphs in this version have been renumbered.

3. **(U)** The NSA and Department of Justice have been working together for some time to seek FISA Court approval for the electronic surveillance of international communications into or out of the United States where there is probable cause to believe that one of the communicants is a member or agent of al Qaeda or an associated terrorist organization. In particular, any court authorization not only would have to satisfy the statutory requirements for an order under the Foreign Intelligence Surveillance Act ("FISA"), 50 U.S.C. § 1801 *et seq.*, but also would have to preserve the speed and agility that the NSA needs to help protect the Nation from another terrorist attack by al Qaeda—the very speed and agility that

was offered by the Terrorist Surveillance Program ("TSP"). The new FISA Court orders are innovative and complex and it took considerable time and work for the Government to develop the approach that was proposed to and ultimately accepted by the Court. As a result of the new orders, any electronic surveillance that was conducted as part of the TSP is now being conducted subject to the approval of the FISA Court.

4. **(U)** On January 17, 2007, the Attorney General made public the general facts that new FISA Court orders had been issued; that the orders authorized the Government to target for collection international communications into or out of the United States where there is probable cause to believe that one of the communicants is a member or agent of al Qaeda or an associated terrorist organization; that, as a result of these orders, any electronic surveillance that was occurring as part of the TSP will now be conducted subject to the approval of the FISA Court; and that under these circumstances, the President has determined not to reauthorize the TSP. The contents of the new orders, however, remain highly classified.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: 24 Jan 07

LT. GENERAL KEITH B. ALEXANDER
Director, National Security Agency

EXHIBIT 2

[U] Accordingly, for some time and since before either the public disclosure of the TSP or the filing of this litigation, the Government has been engaged in the process of exploring whether an alternative approach for FISA Court approval that would ameliorate the drawbacks of the traditional FISA procedures could be authorized to cover surveillance activities similar to those conducted under the TSP. On January 10,2007, as a culmination of that lengthy process, the FISA Court issued new classified orders. While the general existence of the new FISA Court orders, as publicly described by the Attorney General, is not classified, the number, nature, and contents of the specific orders described herein are highly classified.